Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1513

UNITED STATES OF AMERICA, *Appellant*

v.

PATRICIA ILENE CLARK, GUARDIAN FOR SHAWN D. CLARK AND TRICIA D. CLARK, MINOR CHILDREN, *Appellee*

On Appeal from the United States Court of Claims

APPELLEE'S OBJECTIONS TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

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Pursuant to the provisions of Rule 42(3) of the Supreme Court Rules, appellee hereby objects to the motion for leave to file an amicus curiae brief submitted in this case by the National Senior Citizens Law Center on behalf of Barbara Jenkins, and states:

1. As a matter of general practice,

Rule 42(1) provides that motions for leave to file amicus curiae briefs are not favored, and Rule 42(2) states that, in cases before the Court on the merits, a brief of an amicus curiae may be filed only after order of the Court. In this case, no such order has been issued; there has been no written consent of the parties; but nevertheless the National Senior Citizens Law Center has lodged an amicus curiae brief with the Court in this case which duplicates in substance the arguments and citations already presented fully by appellee's brief.

Thus, the proposed amicus curiae brief presents nothing new for the Court's consideration, and its acceptance would merely unnecessarily add to the Court's burden in this case.

2. Moreover, while Barbara Jenkins and the class of minor civil service annuitants she purports to represent in

Jenkins v. United States Civil Service Commission, 460 F.Supp. 611 (D.C.,D.C. 1978), appeal pending U.S. Court of Appeals for the District of Columbia Circuit, may have perfectly good annuity claims under the Civil Service Retirement Act to pursue in that case, there is clearly no need for her to become involved in this case which is limited exclusively to the very narrow, extremely favorable facts that support the specific annuity claims of Shawn and Tricia Clark standing alone. Neither Shawn and Tricia nor their mother purport to "represent a class of claimants," and they are not prepared to concede, directly or indirectly, that Shawn's and Tricia's claims under the statute are the same as those asserted by Barbara Jenkins on behalf of the broad class of claimants she is endeavoring to represent.

Here, the record establishes that

Shawn and Tricia lived with their deceased father under the same roof through 1971; that, in 1972, during the father's lifetime, a court of competent jurisdiction entered a decree which judicially established the parent-child relationship between Shawn, Tricia and their father; the father was ordered to support Shawn and Tricia, and he did support them to the date of his death -- and even after his death, through proceeds of life insurance.

Appellee asserts that these facts patently entitle Shawn and Tricia to the relief granted by the Court of Claims in this case. If that assertion is correct, it would clearly be unjust and unfair for their case to be complicated or encumbered by broad "class action claims," wherein the actual factual situations may be far different, in some instances at least, than the clear-cut situation presently

before the Court in this case standing alone.

3. Furthermore, Barbara Jenkins and the "class" she and the National Senior Citizens Law Center represent, are not mere "friends of the Court" in the usual context. Rather, they are active litigants in another case which is presently pending before the United States Court of Appeals for the District of Columbia Circuit, and which might ultimately reach this Court via a petition for certiorari. In effect, therefore, instead of presenting the ordinary type of amicus curiae brief for this Court's consideration, these litigants from another forum are endeavoring to argue their case here in advance of any hearing in the Court of Appeals.

4. Finally, the proposed amicus curiae brief endeavors to re-argue, as appellee has already done in her brief,

that "The Court of Claims Had Jurisdiction Over This Case" and "The Lived-With Provision Impermissibly Discriminates Against Illegitimate Children." But, Jenkins and her class did not bring their claims in the Court of Claims – they sued in the District Court; and in that District Court case, the Government elected not to "defend the constitutionality [of the 'lived-with' provision]" (see Jenkins v. U. S. Civil Service Commission, at 460 F.Supp. 611, 612.

Thus, Jenkins and the class she represents have no compelling interest in the Court of Claims jurisdictional issue or the Fifth Amendment issues involved in this case.

In the final analysis, their presence here is unnecessary, and it tends to complicate (through broad, sweeping "class action-type" considerations) this very simple case which relates to Shawn and

Tricia Clark alone and their legal right to a survivors' annuity under the Civil Service Retirement Act based exclusively on the specific facts of this case. In other words, the appearance of Barbara Jenkins and her class might well unfairly prejudice the rights of the two (2) minors in this case as first brought before this Court.

CONCLUSION

While appellee and her connsel wish Barbara Jenkins and the National Senior Citizens Law Center continuing good luck in the endeavors they are making in a completely separate class action case in the District of Columbia Circuit they strenuously oppose their amicus curiae appearance in this case, and therefore, urge this Court to deny their motion for leave to file the amicus

curiae brief lodged herein on August 2, 1979.

Respectfully submitted,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that copies of appellee's foregoing objections to the motion for leave to file amicus curiae brief were served by mail this 8th day of August, 1979 upon Ms. Toby S. Edelman, National Senior Citizens Law Center, 1424 16th Street, N. W., Washington, D.C., 20036, attorney for amicus curiae, and Honorable Harriet S. Shapiro, Assistant to The Solicitor General, Department of Justice, Washington, D. C. 20530.

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